No. 15816

IN THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JAMES WILSON, Relator and Best Friend of Clifford Jefferson
Appellant,

v.

FRED DIXON, Warden of the California State Prison at San Quentin, California
Appellee.

APPELLEE'S BRIEF

Appeal From the United States District Court for the Northern District of California
Northern Division

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STATEMENT OF THE CASE

On or about May 29, 1957, appellant sought to file a petition for writ of habeas corpus ad prosequendum and ad testificandum in the United States Court of Appeals for the Ninth Circuit. The document was addressed to Hon. William Denman. (Tr. 2.) On June 12, 1957, Hon. William Denman because of the pressure of work as Chief Judge of the Circuit declined

to entertain the application and transferred it to the United States District Court for the Northern District of California, Northern Division. (Tr. 1.)

On June 24, 1957, Judge Halbert, denied the petition for writ of habeas corpus ad prosequendum and ad testificandum as well as the motion for leave to file a criminal complaint. (Tr. 56-59.) A petition for rehearing in this matter was denied on July 5, 1957, and an "Affidavit for Certi[fiac]te of Probable Cause" was denied on July 12, 1957, on the ground that in the court's opinion the appeal was not taken in good faith. (Tr. 59-84.)

On November 7, 1957, a petition for certificate of probable cause and allowance of an appeal in forma pauperis was granted by Chief Judge Stephens even though the document presented was tangled and practically unintelligible "In order that petition may be assured of the full flow of [s]ue process of law." (Tr. 56.)

A petition for writ of assistance filed by appellant in this court was dismissed on January 15, 1958, as frivolous and on or about February 18, 1958, appellant filed his brief on appeal in propria persona.

STATEMENT OF FACTS

This proceeding arises out of the efforts of appellant Wilson, an inmate of Folsom State Prison, Represa, Sacramento County, California, to file a petition for writ of habeas corpus on behalf of another inmate, one Clifford Jefferson, an inmate of San Quentin

State Prison, Marin County, California. Jefferson is confined in the California state prison under sentence of death for a violation of Section 4500 of the California Penal Code. *People* v. *Jefferson,* 47 Cal. 2d 438, 303 P. 2d 1024, cert. den. 352 U.S. 1029, 1 L. Ed. 2d 600, 77 S. Ct. 597.

On March 18, 1957, Jefferson had filed his own petition for writ of habeas corpus in the United States District Court for the Northern District of California, Southern Division, numbered 36282 on the files of that court. After a hearing in the case, Judge Goodman denied the petition for habeas corpus on April 16, 1957. A certificate of probable cause was granted and a notice of appeal filed on April 29, 1957. After briefs were filed and the matter argued, this court on November 15, 1957, affirmed the order of the District Court. (*Jefferson* v. *Teets,* 248 F. 2d 955.) A petition for writ of certiorari to the United States Supreme Court was denied on March 3, 1958. (26 Law Week 3250.)

From the allegations of the appellant's various documents contained in the Transcript on Appeal as well as from appellant's brief, it appears that Wilson on or about March 19, 1957, sought to file an application for writ of habeas corpus ad instanta which he had prepared on behalf of Jefferson. (Tr. 3-4.) This document was held up for a short period of time prior to mailing by the prison officials. (Tr. 5.) Appellant thereafter learning from the newspapers that Jefferson's own petition for habeas corpus had been denied

in the District Court prepared an "Affidavit; Motion for Permission to File Supplement Brief; and Supplement Brief" in *Jefferson's* case. (Tr. 5, 36-53.) The prison authorities refused Wilson permission to mail these documents at that time. (Tr. 9-10.)

Appellant then sought to file the instant petition for writ of habeas corpus ad prosequendum and ad testificandum as well as "complaint-criminal" to which documents were attached "Affidavit; Motion for Permission to File Supplement Brief; and Supplement Brief." (Tr. 7-55.) Appellant sought to file this document as "Relator and Best Friend of Clifford Jefferson." (Tr. 1.)

Appellant in these documents contended that Section 4500 of the California Penal Code had been discriminatorily applied as to Jefferson; that although appellant had so advised Jefferson's attorneys prior to trial in the state courts they had not availed themselves of Wilson's advice and hence were guilty of "suppressing evidence favorable to Jefferson." (Tr. 37-43.) The petition also alleged that Wilson and Jefferson were deprived of their civil rights by reason of the fact that the prison officials as well as the Attorney General's Office of the State of California had refused to immediately allow the mailing of these various documents (prepared by appellant on behalf of Jefferson) to the courts (Tr. 8-30.) and thus appellant was entitled to the issuance of a criminal complaint against the responsible parties and Jefferson was entitled to his release upon habeas corpus. (Tr. 7-50.)

The memorandum opinion of the District Judge in denying the petition for writ of habeas corpus ad prosequendum and ad testificandum with the related documents was to the effect: (1) that the inmate on whose behalf the writ was sought namely, Clifford Jefferson, was not within the territorial jurisdiction of the District Court; (2) that appellant had failed to comply with the jurisdictional requirements in his petition and that it failed to state a cause of action; and (3) that the District Court had no jurisdiction to issue a criminal complaint in the form submitted by appellant. (TR 56-59.)

SUMMARY OF ARGUMENT

Appellant's Contentions

Apparently appellant is contending on this appeal that the District Court erred in denying his petition and the incorporated documents on the following grounds: (1) that the application of Section 4500 of the California Penal Code as to inmate Jefferson was discriminatory and Jefferson's conviction was a violation of due process of law; (2) that Jefferson's trial attorneys who were court appointed were officers of the state and their refusal to present this argument constituted "suppression of evidence favorable to Jefferson" by the state; (3) that the actions of the prison authorities and the Attorney General's Office in refusing to permit the immediate mailing of Wilson's petitions on behalf of Jefferson constituted a violation of the civil rights of both Wilson and Jeffer-

son; (4) that such alleged interference by the state authorities with Wilson's civil rights constituted a "conspiracy" for which he was entitled to the issuance of a criminal complaint; and (5) that the total of these complaints rendered the imprisonment of Jefferson illegal and void and hence Jefferson was entitled to a writ of habeas corpus.

Respondent's Contentions

Respondent submits that the action of the District Court in denying the petition and related documents was proper as (1) the petition failed to state facts entitling petitioner and appellant herein to any relief from a federal court; (2) that appellant had no right under either the state or federal laws or constitutions to practice law; (3) that the prison authorities have the duty of maintaining discipline in state prisons and in no manner have violated any rights guaranteed to appellant under either the state or federal constitutions.

ARGUMENT

I. The Petition for Writ of Habeas Corpus Ad Prosequendum and Ad Testificandum as Well as the Supplemental Documents Failed to State Facts Entitling Appellant to Relief from the Federal Courts

Appellant by the various documents entitled petition for writ of habeas corpus ad instanta, petition for habeas corpus ad prosequendum and ad testificandum was not seeking to obtain his release from unlawful confinement under a state judgment but was

seeking to effect the release of another state prison inmate, Jefferson. Appellant sought to raise on behalf of Jefferson an argument which neither Jefferson nor his attorneys sought to raise in the state courts, either at trial or on appeal or in the federal courts. Jefferson was admittedly represented by counsel in both the state and federal courts. Nevertheless, appellant, who was not in any manner involved in the charge against Jefferson, seeks to raise points which he believes would invalidate Jefferson's state conviction for the first time in a federal habeas corpus proceeding. In so doing he alleges on the face of his petition that his arguments had been presented to Jefferson's attorneys prior to the trial in the state courts and that they had rejected them and hence appellant charges that this act "constituted suppression of evidence favorable to Jefferson" by the state authorities.

The point that appellant sought to urge in the habeas corpus proceeding was that Section 4500 of the California Penal Code was unconstitutional because of its discriminatory application to Jefferson by the prosecuting authorities of Sacramento County. Appellant predicated this contention on his belief that certain other inmates of the state prison had committed similar acts and had not been prosecuted under this section. It is obvious that his contention is without merit. The question of whether or not certain other individuals should or should not be prosecuted for a violation of a criminal statute is a matter residing within the discretion of the district attorney of the

particular county. His determination as to whether he has sufficient evidence to present the matter is one that is not subject to review. The constitutionality of Section 4500 of the Penal Code as well as its predecessor (Sec. 246 P. C.) has been fully considered both by the California courts and the United States Supreme Court and upheld in both instances. (*People* v. *Finley,* 153 Cal. 59, 94 P. 248; *Finley* v. *California,* 222 U. S. 28; *People* v. *Wells,* 33 Cal. 2d 330; 202 P. 2d 53; *In re Wells,* 35 Cal. 2d 889, 221 P. 2d 947.) Jefferson in his own actions sought to attack the constitutionality of this statute and his contentions were rejected (*Peo.* v. *Jefferson,* 47 Cal. 2d 438, 303 P. 2d 1024; cert. den. 352 U. S. 1029, 1 L. Ed. 2d 600, 77 S. Ct. 597) as well as by this Court in *Jefferson* v. *Teets,* 248 F. 2d 955, cert. den. 26 U. S. Law Week 3250.

The face of the petition discloses that both Jefferson and his counsel had been advised of appellant's contentions prior to the trial in the state courts and apparently found no merit in this contention which was not sought to be raised therein. It is patent that at this time, appellant who is in no manner affected by the application of such statute may not seek to attack its constitutionality in its application to Jefferson. (*Brown* v. *Allen,* 344 U. S. 443, 73 S. Ct. 397, 97 L. Ed. 469; *Darr* v. *Burford,* 339 U. S. 200, 94 L. Ed. 767, 70 S. Ct. 587.)

Further, the allegations to the effect that the court appointed counsel of Jefferson in the state courts were state officers and their failure to act in accordance

with appellant's legal theories constituted "the suppression of evidence favorable to Jefferson" is totally without merit. Under California law when attorneys are appointed to represent a defendant in a criminal case, they stand in the same position to such defendant as would his private counsel. (*In re Atchley,* 48 Cal. 2d 408, 310 P. 2d 15; *In re Hough,* 24 Cal. 2d 522, 150 P. 2d 448.) So regardless of appellant's contentions it clearly appears that Jefferson had full opportunity to present the question of the application of Section 4500 of the Penal Code as to himself in the state and federal courts and did not do so either by himself or through his various counsel which the courts appointed to represent him and hence such question would be waived. (*Brown* v. *Allen,* 344 U. S. 443, 73 S. Ct. 397, 97 L. Ed. 469.) Since there was a failure to raise this question in the state courts there was no exhaustion of state remedies as to this point and it may not be raised for the first time in a petition for writ of habeas corpus in a federal district court since California provides for an adequate post-conviction remedy. (*Mooney* v. *Holohan,* 294 U. S. 103, 55 S. Ct. 340, 79 L. Ed. 791; *Darr* v. *Burford,* 339 U. S. 200, 94 L. Ed. 767, 70 S. Ct. 587.)

Insofar as the allegations of the petition for writ of habeas corpus ad prosequendum and ad testificandum are concerned, the petition on its face disclosed that Jefferson, the person on whose behalf the writ was sought was outside the territorial jurisdiction of the court. The appellant, Wilson, was confined in

Folsom State Prison, Represa, California. This was within the jurisdiction of the Northern District, Northern Division of the District Court. Jefferson was confined in San Quentin State Prison, Marin County, which was within the jurisdiction of the Northern District, Southern Division. (28 U. S. C. 84.) Hence it appeared that the person on whose behalf the writ was sought was not within the territorial division and the court had no jurisdiction over the warden of the state prison wherein Jefferson was incarcerated. (*Ahrens* v. *Clark,* 335 U. S. 188; *McAffee* v. *Clemmer,* 171 F. 2d 131; *Johnson* v. *Matthews,* 182 F. 2d 677.)

As to appellant's alleged deprivation of his civil rights no showing was made on the face of the petition that he sought relief from the state courts as to any deprivation of these rights and hence he would not have exhausted his state remedies. (*Darr* v. *Burford,* 339 U. S. 200; *Brown* v. *Allen,* 344 U. S. 443.)

It also appears on the face of the various documents submitted that appellant did not comply with the provisions of Sections 2244 or 2254 Title 28 U. S. C. He has shown no reason on behalf of Jefferson as to why the allegations sought to be presented could not have been presented by Jefferson in his prior petition and actions in the state and federal courts. On the contrary, it appears on the face of the documents that appellant, notwithstanding the pendency of habeas corpus actions on behalf of Jefferson in another division of the District Court and in this Court, contended

that he had a right to file additional documents on behalf of Jefferson in another District Court. It is merely an attempt to circumvent the provisions of Section 2244 Title 28 and burden the court with a multiplicity of actions.

Thus it would appear that the action of the District Court in denying the petition for writ of habeas corpus ad prosequendum and ad testificandum was proper on the various grounds as set forth in the memorandum opinion of the court.

II. Appellant Has Neither a Constitutional Right Nor Any Right to Practice Law While an Inmate of a State Prison

As is apparent from an examination of the various documents submitted by appellant herein, he is claiming that he has a right both under state and federal statutes to practice law while an inmate of a state prison. Appellant neither was nor is an attorney. He was neither a codefendant nor in any manner involved in the proceeding which culminated in Jefferson's being convicted of a violation of Section 4500 of the California Penal Code. Jefferson was represented by able and competent counsel in the state trial courts and on appeal. (*People* v. *Jefferson,* 47 Cal. 2d 438, 303 P. 2d 1024, cert. den. 352 U. S. 1029, 1 L. Ed. 2d 600, 77 S. Ct. 597) as well as in the federal courts (*Jefferson* v. *Teets,* 248 F. 2d 955, cert. den. March 3, 1958, 26 U. S. Law Week 3250).

Appellant in the instant proceedings was a mere interloper without any interest in the matter, who without permission or request from Jefferson, sought

to intervene in such proceedings and to initiate additional ones on behalf of Jefferson.

Appellant has based his right to so act upon the provisions of Section 1474 of the California Penal Code and upon his interpretation of Section 2242, Title 28 U. S. C. Section 2242, Title 28 U. S. C. provides that a writ of habeas corpus shall be in writing signed and verified by the person for whose relief it is intended or by someone acting in his behalf. The words "or by someone acting in his behalf" were added to the statute in 1947. The Code Reviser's Notes stated that the amendment conformed to the actual practice of the courts as set forth in *U. S. ex rel. Funaro* v. *Watchorn,* 164 F. 152; *Collins* v. *Traeger,* 27 F. 2d 842. The cited cases disclose that the courts only permitted a petition for writ of habeas corpus to be filed on behalf of another person where the petition set forth some reason or explanation satisfactory to the court showing why the petition was not signed and verified by the person detained and what relation the next friend bore to such person. (*U. S. ex rel. Bryant* v. *Houston,* 273 F. 915; *Gusman* v. *Marrero,* 180 U. S. 81; *Ex parte Hibbs,* 26 F. 421; *In re Craig,* 70 F. 969; *In re Chavez,* 72 F. 1006; *Ex parte Dostel,* 243 F. 664; *Sisquoc Ranch Co.* v. *Roth,* 153 F. 2d 437.)

Upon the face of the instant petition it appeared that Jefferson had filed his own petition for habeas corpus. Appellant had no authority to file such a document upon behalf of Jefferson. No showing was or could be made that appellant had any interest in the

matter. He was purely an intruder or uninvited meddler styling himself next friend. As stated by the court in *U. S. ex rel. Bryant* v. *Houston,* 273 F. 915:

"It was not intended that the writ of habeas corpus should be availed of, as matter of course, by intruders or uninvited meddlers, styling themselves next friend. *Gusman* v. *Marrero,* 180 U.S. 81. * * *"

Wilson was not a codefendant with Jefferson in the state courts upon the 4500 Penal Code charge. Wilson had no personal interest in this matter to protect. Jefferson was in no way precluded from seeking his own relief in both state and federal courts. Wilson had no right to practice law in either the state or federal courts. Hence under no circumstances could he be considered in the same category as Egan in the case of *In re Egan,* 24 Cal. 2d 323, 149 P. 2d 693 and Wilson would not fall within the purview of Section 1474 of the California Penal Code.

The practice of law is a privilege not a right. The right to practice law not only presupposes in its possessor integrity, legal standing and attainment, but also the exercise of a special privilege, highly personal and partaking of the nature of a public trust. (*Townsend* v. *State Bar,* 210 Cal. 362, 291 P. 837; *In re Lavine,* 2 Cal. 2d 324, 41 P. 2d 161.) It can hardly be urged that appellant herein possessed these qualifications.

This court may take judicial notice of the fact that innumerable petitions for writs of habeas corpus are filed by the various inmates of state prisons. In many

instances, as in the present one, they are virtually unintelligible. To uphold a contention such as is urged by appellant herein, that he has a right under both the federal and state statutes to file such documents on behalf of another inmate, would add to the already heavy burden placed on the courts. It would in no way assist in preserving the constitutional rights of such inmates. There is no doubt that if inmates were permitted as a matter of right to file documents on behalf of other inmates there would be no end to useless and frivolous litigation. The court files would be cluttered with documents without merit.

The inmate on whose behalf the present actions were instituted had his rights fully protected under both state and federal law. He was in no manner deprived of "due process of law." Appellant seeking to act upon behalf of such inmate is in reality demanding a right to practice law. He is demanding not "equal protection of the laws" but on the contrary, the enforcing of special privileges to which he is not entitled any more than any other layman in California. Patently, the District Court acted properly in denying the petition and related documents inasmuch as appellant was seeking a privilege to which he was not entitled and in no manner had demonstrated that the alleged rights of which he was deprived were such as to raise a federal question cognizable by habeas corpus in a federal district court. (*In re Meek,* 138 F. Supp. 327.)

III. The Prison Authorities of the State of California Did Not Deprive Appellant of Any Rights to Which He Was Legally Entitled or For the Deprivation of Which He Might Seek Relief in a Federal District Court

It is well established that censorship of mail is a problem of prison discipline in which the courts will not interfere. (*Dayton* v. *McGranery,* 201 F. 2d 711; *Numer* v. *Miller,* 165 F. 2d 986; *Stroud* v. *Swope,* 187 F. 2d 850; *Ortega* v. *Ragen,* 216 F. 2d 561; *Adams* v. *Ellis,* 197 F. 2d 483; *Morris* v. *Igoe,* 209 F. 2d 108; *State* v. *Gladden,* 240 F. 2d 910; *Gerrish* v. *State* of *Maine,* 89 F. Supp. 244; *Reilly* v. *Hiatt,* 63 F. Supp. 477; *Green* v. *State of Maine,* 113 F. Supp. 253; *In re Chessman,* 44 Cal. 2d 1, 279 P. 2d 24.)

A prisoner has the right to communicate with the court relating to any matter involving his incarceration. (*Ex parte Hull,* 312 *U. S.* 546; *Cochran* v. *Kansas,* 316 U. S. 255.) This right, however, does not extend to the preparation of legal documents on behalf of other inmates who have already prepared their own petitions either by themselves or through counsel.

On the contrary, an inmate of a state prison is not entitled to either unlimited time for legal research nor to research problems affecting other inmates which in no manner pertain to the inmate's own case. (*In re Chessman,* 44 Cal. 2d 1, 279 P. 2d 24.)

Section 5058 of the California Penal Code provides that the director may prescribe rules and regulations for the administration of the prisons and may change

them at his pleasure. Pursuant to this provision, prison Rule F 2, 2602 was adopted. This rule provides:

"Legal documents found in the possession of an inmate not pertaining to his own case will be confiscated. An inmate is permitted to work on his own case in his leisure time in compliance with the rules and regulations of the institution. An inmate found to be assisting another inmate in preparation of legal documents is subject to disciplinary action."

This rule was clearly within the power of the prison authorities to promulgate in conjunction with the carrying out of their duties under state laws. As stated in *Siegel* v. *Ragen,* 180 F. 2d 785, 788: "The Government of the United States is not concerned with, nor has it power to control or regulate the internal discipline of the penal institutions of its constituent states." The United States Supreme Court in the case of *Price* v. *Johnston,* 334 U. S. 266, 68 S. Ct. 1049, 92 L. Ed. 1356, stated:

"Lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system."

Thus it would appear that no matter how wide the approach to the problems presented, appellant has failed to disclose that impingement on some federal right owing either to him or to Jefferson. Appellant for neither himself nor Jefferson has stated a cause of action under the Fourteenth Amendment, 42 U. S. C. 1983, 1985 (3), 18 U. S. C. 242, or 28 U. S. C.

2254. (*U. S.* v. *Ragen,* 237 F. 2d 953; *Tabor* v. *Hardwick,* 224 F. 2d 526; *Wagner* v. *Ragen,* 213 F. 2d 294; *Kelly* v. *Dowd,* 140 F. 2d 81.)

IV. The District Court Did Not Err in Denying Appellant the Right to File a Criminal Complaint Against the Prison Authorities or Other State Officials

As part of the various documents submitted by appellant was one entitled "complaint-criminal" (Tr. 30-36). That this document was totally without merit and the district court properly dismissed such matter is apparent. The civil rights statutes only give a right of civil action for a deprivation of rights, privileges and immunities secured by the Constitution and laws of the United States. (*Tenney* v. *Brandhove,* 341 U. S. 367, 71 S. Ct. 783, 95 L. Ed. 1019; *U. S.* v. *Williams,* 341 U. S. 70, 71 S. Ct. 581, 95 L. Ed. 747.) Title 18 U. S. C. Sections 241 et seq. only covers conduct which interferes with rights arising from the substantive powers of the Federal Government and does not apply to interference by state officers with rights which the Federal Government merely guarantees from abridgment by the State. (*U. S.* v. *Williams,* 341 U. S. 70, 71 S. Ct. 581, 95 L. Ed. 747.) In the present matter, appellant has failed to establish that the state officers have conspired to or did deprive him of any "right" which was in any way secured to him by the Constitution or laws of the United States. Neither he nor Jefferson have in any manner been deprived of due process of law. By virtue of his status as a convict, appellant is not given greater rights than other citi-

zens of the State of California or the United States. (*In re Chessman,* 44 Cal. 2d 1, 279 P. 2d 24.) He clearly has failed to state a cause of action for relief under either the civil or penal provisions of the civil rights statutes. (*Bradley* v. *Fisher,* 13 Wall. 335, 20 L. Ed. 646; *Alzua* v. *Johnson,* 231 U. S. 106, 34 S. Ct. 27, 58 L. Ed. 142; *Kenny* v. *Fox,* 232 F. 2d 288; *Jennings* v. *Nester,* 217 F. 2d 153; *Peckham* v. *Scanlon,* 241 F. 2d 761; *U. S.* v. *Bibb,* 249 F. 2d 839.)

It is well established that a federal court will not interfere with the conduct of state officials in carrying out their duties imposed under state laws. Appellant in no manner demonstrated that he was deprived of any "right" protected by either the federal laws or Federal Constitution when the state officials did not immediately forward his documents to the court. These documents did not relate to his own case. They were an attempt by appellant to practice law on behalf of another inmate of a state prison. Appellant had no right to engage in the practice of law. The denial of such right by the prison authorities in matters not relating to the applicant's own case or his present incarceration can in no manner be urged as a deprivation of civil rights nor as a conspiracy under color of state law to deny appellant his rights guaranteed by the Federal Constitution. Moreover, the documents were forwarded to the courts and found to be without merit. Appellant cannot show any prejudice from the delay. It would appear that his claims in every respect are without merit.

Conclusion

Respondent submits that a review of this record demonstrates that the action of the district court in denying the petition for habeas corpus ad prosequendum and ad testificandum and related papers was proper and in no manner deprived appellant of that due process of law to which he was entitled.

The upholding of a contention such as maintained by appellant herein would permit each of the some 15,000 inmates of the state prisons of California to file petitions for writs of habeas corpus as a matter of right upon behalf of other inmates. It would compel the prison authorities to forward these documents to the courts immediately, regardless of whether the inmate on whose behalf the petition was sought had documents of his own on file in that court. It would increase the burdens already placed upon the courts thousandfold and fail to accomplish any additional protection for the respective inmates. Where as in the present case the inmate on whose behalf these documents were sought to be filed has been accorded the full flow of due process in both the state and federal courts, the contention of appellant herein constitutes but a "mockery of justice." Appellant cannot nor has shown any reason for his intervention than that of an unwarranted meddler and an unlicensed attorney at law. The documents submitted to the district court neither complied with the requirements of Title 28 U. S. C. 2254 nor in any manner presented a substantial federal question. The questions presented are

ones involving prison discipline and do not in any way reflect a deprivation of a right given appellant under the federal law or the United States Constitution.

It would therefore appear that the present appeal is without merit and should fall within the provisions of *Tate* v. *Heinze,* 187 F. 2d 98 and *Higgins* v. *Steele,* 195 F. 2d 366 and should be dismissed as frivolous.

Respectfully submitted,

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